

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
"CASES PROVISIONALLY CONSOLIDATED"
CASE NO. 09-20526-CIV-GOLD

KLAUS HOFMANN, an individual,

Plaintiff,

v.

EMI RESORTS, INC., a foreign corporation,
et al.

Defendants.

- - - - - x

CASE NO. 09-20657-CIV-GOLD
AUREILO AGUILAR, an individual, et al.
Plaintiffs,

v.

EMI RESORTS, INC., a foreign corporation,
et al.

Defendants.

- - - - - x

100 Southeast 2nd Street
Miami, Florida
Thursday, May 7, 2009
10:05 a.m.- 12:38 p.m.

DEPOSITION OF DERRICK ELLIOTT

Taken before Edward Varkonyi, Registered
Professional Reporter and Notary Public for the State
of Florida at Large, pursuant to Notice of Taking
Deposition filed in the above cause.

1 APPEARANCES
 2 MICHAEL DIAZ, JR., ESQ.,
 3 GERARDO J. RODRIGUEZ-ALBIZU, ESQ.,
 4 and GARY DAVIDSON, ESQ., of the firm of
 5 Diaz Reus & Targ, LLP,
 6 100 Southeast 2nd Street, Suite 2600
 7 Miami, Florida 33131
 8 and
 9 HILDA PILOTO, ESQ., of the firm of
 10 Arnstein & Lehr, LLP
 11 200 South Biscayne Boulevard, Suite 3600
 12 Miami, Florida 33131
 13 on behalf of the Plaintiff.

14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

ALSO PRESENT: Frederick Elliott
 William Belke
 Alejandro Garcia
 Gill Mujarra

I N D E X

	Witness	Direct	Cross	Red.	Rec.
DERRICK ELLIOTT	4	78	78	--	

1 Thereupon--
 2 DERRICK ELLIOTT
 3 was called as a witness by the Plaintiff and, having
 4 been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIDSON:

Q. Please state your full name.

A. My name is Derrick Elliott.

Q. Good morning, Mr. Elliot. My name is Gary Davidson. Your deposition is being taken today.

What did you do to prepare for your deposition today?

A. What did I do to prepare for my deposition?

Q. Yes, sir, that is the question.

A. I reviewed my former deposition.

Q. Was that the deposition that you gave in this case in March of 2009?

A. That would be.

Q. Is that correct, sir?

A. Yes.

Q. Was that a deposition that you gave on March 29, 2009?

A. Is that a Saturday?

EXHIBITS

Plaintiff's	For Ident.
1.....	5
2.....	10
3.....	19
4.....	28
5.....	30
6.....	33
7.....	35
8.....	40
9.....	53

(ALL EXHIBITS RETAINED BY MR. DAVIDSON.)

Q. I couldn't tell you, sir.

A. I believe that was the date.

Q. Sorry, I stand corrected, March 28, 2009.

A. If that was Saturday, March the 28th, 2009, yes.

Q. It was, indeed, a Saturday. Let's mark this as Exhibit Number 1, please.

MR. MARTINEZ: Exhibit 1, you are starting with new numbers?

MR. DAVIDSON: For this deposition, yes.

MR. MARTINEZ: And Exhibit 1 is the transcript of the last depo?

MR. DAVIDSON: Yes, sir.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 1 for Identification, which was retained by Mr. Davidson.)

BY MR. DAVIDSON:

Q. I am now handing you Plaintiffs's Exhibit Number 1, which includes not only the transcript but the exhibits and I ask you if you recognize that document, sir?

A. Exhibit Number 1?

Q. Yes, sir, that's what I have handed you, attached to which are all of the exhibits to the

Page 6

1 deposition transcript.
2 A. I recognize Exhibit Number 1 and I am
3 sure these are the same exhibits that we had before.
4 Q. So you are referring to the exhibits that
5 were introduced during last deposition, which
6 occurred in this case on March 28th, which is the
7 Saturday that you referred to; is that correct, sir?
8 A. Yes. I would have to go through them to
9 be sure, obviously.
10 Q. Do you want to do that, sir?
11 A. I guess I should.
12 Q. You do whatever you feel you need to do,
13 sir.
14 A. This e-mail was Exhibit 1.
15 Q. Sir, I will be asking the questions
16 today, you provide the answers.
17 My pending question is, is Exhibit Number
18 1 a copy of the deposition and attached exhibits that
19 were introduced during your prior deposition given in
20 this case on March 28, 2009? The question calls for
21 a yes or no answer.
22 I will take all the time that is
23 necessary and wait for your answer.
24 A. This is 5.
25 Q. Please take down everything that is said

Page 7

1 by the witness as he goes through each and every
2 exhibit that we provided to him. Thank you.
3 MR. MARTINEZ: I want to make sure
4 Exhibit Number 2 is complete.
5 MR. DAVIDSON: There is no pending
6 question to counsel. The question is posed to
7 the witness. Please don't coach the witness.
8 That's against the rules.
9 MR. MARTINEZ: I am not pointing out
10 anything. I am just pointing out there is one
11 page on Exhibit 2.
12 MR. DAVIDSON: Counsel, if you continue
13 on that course, we will shut down the deposition
14 and call the judge.
15 MR. MARTINEZ: That's fine.
16 THE WITNESS: I don't recall Exhibit 7.
17 BY MR. DAVIDSON:
18 Q. Thank you. Anything else you wish to
19 add?
20 A. There were 15 exhibits?
21 Q. Again, Mr. Elliott, I ask the questions,
22 you provide the answers.
23 Have you now had a chance, over the last
24 approximately seven minutes, to review each and every
25 exhibit that was attached to your deposition that I

Page 8

1 handed to you, which is Exhibit Number 1?
2 A. Yes.
3 Q. Is Exhibit Number 1 a full and complete
4 record of everything that was provided to you here
5 today?
6 MR. MARTINEZ: Objection to form.
7 BY MR. DAVIDSON:
8 Q. Is Exhibit Number 1 complete, to the best
9 of your knowledge, sir?
10 A. Yes.
11 Q. Thank you. May I have it back, please.
12 Now, did you have a chance to watch the video of your
13 deposition?
14 A. Where would I watch that video?
15 Q. I'll repeat the question, sir.
16 Did you have a chance to watch the video
17 of your deposition?
18 A. No.
19 Q. Did you hear reports from anyone that
20 they had watched the video of your deposition?
21 MR. MARTINEZ: Objection, to the extent
22 that it calls for attorney-client privilege
23 don't answer. You can respond otherwise but do
24 not disclose the contents of communications with
25 counsel.

Page 9

1 BY MR. DAVIDSON:
2 Q. Other than from your lawyers did anyone
3 tell you that they had watched a portion of or the
4 complete video of your deposition?
5 A. Yes.
6 Q. Who told you that?
7 A. Who told me that they had seen my video?
8 Q. Sir, the questions don't change based on
9 your repetition of it.
10 You are taking my time, when you repeat
11 the question. I have two hours to question you, so
12 what we're going to do is when you repeat the
13 question, we deduct your repetition of the question
14 from my questioning time.
15 MR. MARTINEZ: Counsel, you are not going
16 to do that, okay. You are not going to do
17 that. You are going to take this deposition and
18 you are not going to be argumentative.
19 MR. DAVIDSON: Do you have an objection?
20 MR. MARTINEZ: I do.
21 MR. DAVIDSON: What's your objection?
22 MR. MARTINEZ: Object, argumentative.
23 Please proceed with the deposition, sir.
24 BY MR. DAVIDSON:
25 Q. Thank you. Now, my question is who

Page 10

1 watched the video and told you about it?
2 A. My video was posted on YouTube by
3 someone, who you may know or have been involved with
4 in doing, it was edited and it's on the Worldwide
5 Web.
6 Q. And that upset you?
7 A. No, it did not.
8 Q. You were happy about it?
9 A. No, I was not happy about that.
10 Q. So it did upset you?
11 MR. MARTINEZ: Objection to form.
12 BY MR. DAVIDSON:
13 Q. Mark this as Exhibit Number 2, please.
14 (The document referred to was thereupon
15 marked Plaintiff's Exhibit No. 2 for Identification,
16 which was retained by Mr. Davidson.).
17 BY MR. DAVIDSON:
18 Q. Exhibit Number 2 is a package of two
19 disks, which is the original of your deposition in
20 video.
21 And it's your testimony, sir, with
22 respect to Exhibit Number 2, that you never saw any
23 aspect of that video; is that correct, sir?
24 A. I saw 15 seconds of it and turned it off.
25 Q. So you did see it?

Page 11

1 A. I went to your Web site, clicked on where
2 it said Derrick Elliott deposition, watched about 15
3 seconds and turned it off and have not returned.
4 Q. Which portion did you see, sir?
5 A. Whatever the first portion is that you
6 have there.
7 Q. You must have been very upset then if you
8 turned it off after 15 seconds?
9 A. It turned my stomach. It was edited and
10 captions were added to it.
11 Q. And what did the captions say that got
12 you so upset?
13 A. I can't recall.
14 Q. What was it that got you so upset that
15 caused you to turn it off after 15 seconds?
16 A. I don't know.
17 Q. You don't know or you choose not to
18 remember for the purposes of this deposition?
19 MR. MARTINEZ: Objection to form,
20 argumentative.
21 MR. DAVIDSON: May I complete my question
22 before you interrupt me with an objection?
23 Could you repeat the question please. Thank
24 you.
25 (The question referred to was read by the

Page 12

1 reporter as above recorded.)
2 MR. MARTINEZ: Same objection to form,
3 argumentative.
4 BY MR. DAVIDSON:
5 Q. Answer the question, please.
6 A. I don't know. I don't remember.
7 Q. You don't remember what?
8 A. I don't remember what the first part is
9 of the deposition on YouTube.
10 Q. It got you so upset that you can't even
11 remember today what it is that you saw on YouTube
12 that got you so upset; is that what your testimony
13 is?
14 A. That is not my testimony. My testimony
15 is I do not remember what the first posting is you
16 have on YouTube of my deposition.
17 Q. Who did you talk to about the postings on
18 YouTube?
19 MR. MARTINEZ: Objection to form. Excuse
20 me, objection to the extent that it calls for
21 attorney-client privilege, do not disclose the
22 contents of attorney-client communications. You
23 may answer the question otherwise.
24 MR. DAVIDSON: The question did not call
25 for a response related to attorney-client

Page 13

1 privilege.
2 MR. MARTINEZ: It did if he spoke with
3 counsel.
4 MR. DAVIDSON: The question did not call
5 for invasion of the attorney-client privilege.
6 I asked him who he spoke to related to
7 the YouTube posting.
8 MR. MARTINEZ: My objection stands. You
9 can answer the question but do not disclose
10 attorney-client privileged communications.
11 BY MR. DAVIDSON:
12 Q. I don't want to hear what you talked to
13 your lawyers about, okay. Forget about your
14 lawyers.
15 Other than your lawyers who did you talk
16 to about YouTube postings of your deposition? Name
17 names.
18 A. Name names. Other than lawyers?
19 Q. I don't think my question could have been
20 any clearer. Yes, other than lawyers.
21 A. I have spoken with staff members about
22 it, so my assistant Brenda Overland.
23 I spoke with my mom about it and I spoke
24 with my brother about it. I have spoken with
25 numerous people about it.

Page 14

1 Do you want me to keep listing names?
2 Q. Sure.
3 A. I spoke with the neighbors in the
4 community in the Dominican Republic about it.
5 Q. What's their name?
6 A. What's their name? Marijke Badart. I
7 spoke with Jesse Ferrell about it. I spoke with
8 Angel Truncoso about it. I spoke with Steve Duck
9 about it.
10 Q. How about Fred Elliott?
11 A. I spoke with my father about it.
12 Q. What did Fred Elliott have to say about
13 it?
14 A. He -- I am trying to remember exactly the
15 way he said it.
16 Really who would do something like that,
17 who would edit something, and cast it like that.
18 Q. And you believed that this law firm did
19 that?
20 A. I don't know who did that.
21 Q. Well, I thought you said earlier that you
22 went on our law firm's Web site?
23 A. No, I went on the eclients --
24 eclientscom.com Web site.
25 Q. That's not what you said earlier, sir?

Page 15

1 A. That's the Web site I saw it at,
2 eclientscom.com.
3 Q. Earlier you said you went on to this law
4 firm's Web site.
5 A. I did not say that. I said your Web
6 site.
7 Q. What did you mean by that?
8 A. That is your client; is it not?
9 Q. You meant to say our clients. So you
10 must have misspoken earlier?
11 MR. MARTINEZ: Objection, argumentative.
12 BY MR. DAVIDSON:
13 Q. Do you misspeak a lot?
14 MR. MARTINEZ: Objection, argumentative.
15 BY MR. DAVIDSON:
16 Q. Has anybody ever told you that?
17 MR. MARTINEZ: Same objection.
18 THE WITNESS: No.
19 BY MR. DAVIDSON:
20 Q. No one has ever told you that misspeak a
21 lot?
22 MR. MARTINEZ: Same objection.
23 THE WITNESS: No.
24 BY MR. DAVIDSON:
25 Q. Do you know what I mean by the word

Page 16

1 misspeak?
2 A. I don't know.
3 Q. You don't know what I mean by the word
4 misspeak?
5 A. Clarify for me.
6 Q. That you say things about certain people
7 or things, meaning about other people or things.
8 MR. MARTINEZ: Objection to form.
9 THE WITNESS: No, I don't do that.
10 BY MR. DAVIDSON:
11 Q. So generally speaking, summarizing what
12 others told you about your performance on YouTube,
13 what was the overriding conclusion? Was it a good
14 performance?
15 A. I was told that it was edited with
16 captions.
17 Q. That wasn't my question. Did people
18 generally think you performed well on YouTube?
19 A. I don't know.
20 Q. They didn't say anything one way or the
21 other?
22 A. No.
23 Q. Well, now, your performance on YouTube
24 was under oath, right?
25 A. Right.

Page 17

1 Q. Did people say anything to you like you
2 came off sounding truthful?
3 A. Those comments weren't made.
4 Q. The deposition transcript that you
5 reviewed, you had an opportunity to make changes to
6 it on an errata sheet, didn't you?
7 A. I don't understand the question.
8 Q. Sure. Let me state it again. Did you
9 have the opportunity, were you given the opportunity
10 to make edits to the deposition transcript?
11 A. No.
12 Q. Nobody told you that you could correct
13 any mistakes that may have been made in the
14 transcription?
15 A. No.
16 Q. When you read the deposition transcript
17 did you see any mistakes that were made in the
18 transcription?
19 A. No.
20 Q. Now, you are familiar with the DMK trust
21 accounts in Florida and in the Dominican Republic,
22 aren't you?
23 A. I am aware of them, yes.
24 Q. Well, you know what I am talking about
25 when I talk about the DMK trust accounts in Florida

Page 18

1 and the Dominican Republic, right?
2 A. Is there more than one trust account?
3 Q. You tell me.
4 A. I'm aware of a DMK trust account.
5 Q. Where is it located?
6 A. With the law firm of DMK.
7 Q. No, I mean physically where is it
8 located?
9 A. I believe it's outlined in one of those
10 exhibits.
11 Q. You're looking around on the table?
12 A. Yeah, looking for the exhibit. Is the
13 account information there?
14 Q. Sir, didn't your companies just file a
15 whole series of documents with the Federal District
16 Court here in Florida, outlining various aspects of
17 an escrow account that was maintained at various
18 times in Florida and the Dominican Republic on behalf
19 of supposedly Juan Dolio?
20 A. Yes, and if we had the exhibit we would
21 have the exact information of that account.
22 Q. Well, I am going to make that available
23 to you right now. We will mark this as exhibit
24 Number 3.
25 (The document referred to was thereupon

Page 19

1 marked Plaintiff's Exhibit No. 3 for Identification,
2 which was retained by Mr. Davidson.)
3 MR. MARTINEZ: Can I see Exhibit Number
4 1, also?
5 MR. DAVIDSON: We're going to focus on
6 Exhibit Number 3.
7 MR. DAVIDSON: I understand. I would
8 like to take a look at Exhibit Number 1 while
9 he's doing that. Anyone have that?
10 MR. DAVIDSON: Let's focus on this page
11 right here.
12 BY MR. DAVIDSON:
13 Q. I am handing you Exhibit Number 3, which
14 is the filing your lawyers did here in Miami last
15 week.
16 Now, take a look at that.
17 MR. MARTINEZ: Is there a courtesy copy
18 for me?
19 MR. DAVIDSON: Sure.
20 MR. MARTINEZ: Thank you.
21 THE WITNESS: Uh-huh.
22 BY MR. DAVIDSON:
23 Q. Now, going back to my original question,
24 at various times that escrow account has been
25 maintained both in Florida and the Dominican

Page 20

1 Republic, correct?
2 A. I am not sure. I don't have anything to
3 do with this trust account.
4 Q. Well, who does?
5 A. Fred Elliott and Enrique De Marchena.
6 Q. Well, you made certain representations to
7 the customers of the Elliott Group about the
8 operation of this trust account, didn't you?
9 A. But I do not operate the account.
10 Q. Answer my question. Didn't you, Derrick
11 Elliott, make representations to Elliott Group
12 customers about the operation of this account in the
13 Dominican Republic and Florida?
14 A. I sent a letter giving instructions to
15 the account.
16 Q. Answer my question.
17 MR. MARTINEZ: Asked and answered.
18 BY MR. DAVIDSON:
19 Q. Didn't you, Derrick Elliott, make
20 representations about this escrow account and how it
21 was going to operate in Florida and in the Dominican
22 Republic to customers of the Elliott Group?
23 MR. MARTINEZ: Objection to form, also
24 asked and answered.
25 BY MR. DAVIDSON:

Page 21

1 Q. Yes or no?
2 A. It's in the letter.
3 Q. Answer my question.
4 MR. MARTINEZ: Same objection.
5 BY MR. DAVIDSON:
6 Q. Yes or no?
7 MR. MARTINEZ: Same objection.
8 THE WITNESS: No.
9 BY MR. DAVIDSON:
10 Q. You didn't make representations to
11 customers of the Elliott Group as to how the escrow
12 account was going to operate; is that your testimony?
13 MR. MARTINEZ: Same objection.
14 THE WITNESS: I sent a letter showing the
15 instructions to send money to that account.
16 BY MR. DAVIDSON:
17 Q. Did you not tell customers of the Elliott
18 Group that their money was going to be used in
19 certain ways if it was placed in the escrow account?
20 A. Can I see that exhibit? I would like to
21 see exactly what was said there.
22 Q. Sir, you need to answer my question. Did
23 you tell customers of the Elliott Group that if they
24 put their money into the DMK escrow account that
25 their money would be used in certain ways?

Page 22

1 MR. MARTINEZ: Objection to form.
2 BY MR. DAVIDSON:
3 Q. Go ahead and answer the question.
4 A. I believe so.
5 Q. Thank you. Now, is it not a fact, sir,
6 that you told those customers if they put their money
7 into that escrow account, that those monies would be
8 used for purposes of Juan Dolio hard and soft costs?
9 MR. MARTINEZ: Objection to form.
10 THE WITNESS: I don't know. I need to
11 see the letter.
12 BY MR. DAVIDSON:
13 Q. You don't know?
14 MR. MARTINEZ: That's his answer.
15 BY MR. DAVIDSON:
16 Q. You don't know?
17 MR. MARTINEZ: Objection to form, asked
18 and answered.
19 THE WITNESS: In order for me to be sure
20 to answer you correctly I would like to see the
21 exhibit.
22 BY MR. DAVIDSON:
23 Q. You have no memory of that; is that your
24 testimony? You don't remember?
25 MR. MARTINEZ: Objection to form, asked

Page 23

1 and answered.
2 THE WITNESS: I don't know.
3 BY MR. DAVIDSON:
4 Q. Sitting here today you have no memory of
5 that?
6 MR. MARTINEZ: Objection to form, asked
7 and answered and argumentative.
8 THE WITNESS: I would rather stay with
9 facts, rather than have you put words in my
10 mouth.
11 BY MR. DAVIDSON:
12 Q. And that's fine. You just don't remember
13 sitting here today whether you said that or not?
14 MR. MARTINEZ: Same objection.
15 THE WITNESS: I don't know exactly what I
16 said in that letter.
17 BY MR. DAVIDSON:
18 Q. I am not asking you for -- I am not
19 asking you exactly what you said in the letter. I am
20 just asking you from your memory, do you have a
21 memory of telling investors that if they put their
22 money in the escrow account for Juan Dolio, that
23 those funds would be used to pay for construction
24 costs, hard and soft, at Juan Dolio?
25 MR. MARTINEZ: Same objection.

Page 24

1 THE WITNESS: I don't recall saying
2 that.
3 BY MR. DAVIDSON:
4 Q. Anything like that?
5 A. Let's see the letter and let's be sure.
6 Q. Why do you feel a need to see the letter?
7 A. Because I'm sure what you are saying is
8 not what I said.
9 Q. Why? Do you feel that I'm lying?
10 MR. MARTINEZ: Objection to form,
11 argumentative.
12 BY MR. DAVIDSON:
13 Q. Do you feel I am trying to trap you?
14 MR. MARTINEZ: Same objection.
15 BY MR. DAVIDSON:
16 Q. Trick you?
17 MR. MARTINEZ: Same objection.
18 THE WITNESS: I don't know.
19 BY MR. DAVIDSON:
20 Q. Do you have any recollection of making
21 representations at all to investors to get them to
22 make payments into the escrow account?
23 A. Purchasers, yes.
24 Q. Okay. Purchasers. What do you think you
25 told them to get them to make payments into the

Page 25

1 escrow account?
2 In your words, what do you think you
3 said?
4 A. I don't know.
5 Q. You don't know? You have no idea?
6 MR. MARTINEZ: Same objection.
7 BY MR. DAVIDSON:
8 Q. Just in a general sense?
9 MR. MARTINEZ: Same objection.
10 BY MR. DAVIDSON:
11 Q. Did you tell them anything?
12 A. Yes.
13 Q. Okay. So you did tell them something.
14 What did you tell them?
15 A. I don't know.
16 Q. Did you tell them that if you put money
17 into the escrow account, the DMK escrow account will
18 be sure to send that money to one of our related
19 companies?
20 MR. MARTINEZ: Objection to form.
21 THE WITNESS: I don't know.
22 BY MR. DAVIDSON:
23 Q. This trust account that Exhibit 3
24 reflects, have any of the monies past March been
25 accounted for?

Page 26

1 A. I don't know. I don't operate that
2 account.
3 Q. You don't have anything to do with that
4 account?
5 A. No.
6 Q. You just send out letters and then don't
7 really monitor it?
8 MR. MARTINEZ: Objection to form,
9 argumentative.
10 BY MR. DAVIDSON:
11 Q. Is there an answer to my question?
12 MR. MARTINEZ: Same objection.
13 BY MR. DAVIDSON:
14 Q. Is there an answer to my question?
15 MR. MARTINEZ: Same objection. You can
16 answer.
17 BY MR. DAVIDSON:
18 Q. You keep saying your same objection, but
19 I am entitled to an answer.
20 MR. MARTINEZ: Okay. You are absolutely
21 right.
22 BY MR. DAVIDSON:
23 Q. Go ahead, Mr. Elliott, you've got to
24 answer the question.
25 A. I do not operate this trust account.

Page 27

1 Q. How much money has been taken from the
2 trust account to pay for current attorneys' fees in
3 this litigation?
4 A. I don't operate that trust account.
5 Q. Does that mean you don't know?
6 A. That would mean I don't have any idea
7 about that account.
8 Q. Well, my question is different. My
9 question is, with respect to this escrow account, how
10 much money has been taken from this account to pay
11 your current lawyers in this litigation?
12 A. I don't have any information about that
13 account.
14 Q. So you don't know?
15 A. I have no information about that
16 account.
17 MR. MARTINEZ: Once, again I request a
18 copy of Exhibit 1 so I can take a look at it. I
19 asked for it about ten minutes ago.
20 MR. DIAZ: I don't have it.
21 MS. PILOTO: Me either.
22 MR. MARTINEZ: If there is no reference
23 to it, I'll move to strike Exhibit 1 and we will
24 put it on the record. Guys, come on. It's
25 common courtesy. I want to see the exhibit.

Page 28

1 MR. DAVIDSON: What does Exhibit 1 have
2 to do with what's going on now?
3 MR. MARTINEZ: I want to see the
4 exhibits.
5 MR. DAVIDSON: What does that have to do
6 with what's going on right now?
7 MR. MARTINEZ: I want to see it as common
8 courtesy. Exhibits are usually left on the
9 table for counsel to look at. I would like to
10 look at it.
11 MR. DAVIDSON: Excuse me.
12 MR. MARTINEZ: Yes, sir.
13 MR. DAVIDSON: Do you mind, may I
14 continue my deposition?
15 MR. MARTINEZ: You can continue your
16 deposition but I just want to see Exhibit 1.
17 Obviously it's not being provided, so that's
18 fine.
19 BY MR. DAVIDSON:
20 Q. Let's mark this as Exhibit 4.
21 (The document referred to was thereupon
22 marked Plaintiff's Exhibit No. 4 for Identification,
23 which was retained by Mr. Davidson.)
24 BY MR. DAVIDSON:
25 Q. Take a look at Exhibit Number 4,

Page 29

1 Mr. Elliott.
2 MR. MARTINEZ: Can I see it, also? Is
3 there a courtesy copy of Exhibit Number 4 for
4 me?
5 MR. DAVIDSON: Certainly.
6 MR. MARTINEZ: Thank you very much.
7 BY MR. DAVIDSON:
8 Q. Now, with respect to Exhibit Number 4,
9 sir, have you been fielding e-mails from various
10 clients with respect to the filings that were done
11 last week in federal court?
12 A. Yes.
13 Q. So you have been answering questions from
14 clients about all the different filings that were
15 made last week; is that right?
16 A. With respect to the business plan.
17 Q. Yes. Is that correct?
18 A. Yes.
19 Q. You have been answering questions from
20 clients?
21 A. Yes.
22 Q. So how much will it cost to complete Juan
23 Dolio?
24 A. I believe it's 12 million and something,
25 with furnishings.

Page 30

1 Q. 12 million and something?
2 A. With furnishings. Do you have a copy of
3 the plan with you?
4 Q. Certainly.
5 A. We can be exact.
6 Q. Mark it as 5.
7 (The document referred to was thereupon
8 marked Plaintiff's Exhibit No. 5 for Identification,
9 which was retained by Mr. Davidson.)
10 BY MR. DAVIDSON:
11 Q. Take a look at Plaintiff's Exhibit 5.
12 How much will it cost you to complete Juan Doe Leo?
13 A. \$12,937,584, is the estimate today.
14 Q. Those are key terms, right, that's the
15 estimate as of today, right?
16 MR. MARTINEZ: Objection to form.
17 THE WITNESS: Yes.
18 BY MR. DAVIDSON:
19 Q. Well, those are your words? Your
20 attorney is objecting as to from, but those are your
21 words, that's the estimate as of today, right?
22 A. We project it could be less.
23 Q. Right. But that's the estimate as of
24 today? What's today? What's today's date?
25 A. May 7th.

Page 31

1 Q. May 7th, 2009. And it's almost what, \$13
2 million.
3 But on April 9, 2009 that what was what,
4 less than 30 days ago, it was about \$9 million to
5 complete, wasn't it?
6 A. Without furnishings and --
7 Q. Who said that?
8 A. I'm saying that.
9 Q. No. I am going back to April 9, 2009 in
10 court.
11 MR. MARTINEZ: In court?
12 BY MR. DAVIDSON:
13 Q. In court. Wasn't the representation made
14 it was going to be \$9 million to complete?
15 MR. MARTINEZ: Objection to the form.
16 THE WITNESS: I wasn't in court.
17 BY MR. DAVIDSON:
18 Q. No, you weren't. That's true. Fair
19 enough. Wait.
20 You know what, we have got to go back in
21 time to September 2008. What was the cost to
22 complete back then?
23 A. I don't know.
24 Q. Let me see if I can refresh your memory.
25 Back in September of 2008 you did a webinar with the

Page 32

1 Lawters; do you remember that?
2 A. We have done several.
3 Q. I know you have, but this one was
4 special. Back in September of 2008 do you remember
5 doing a tour down in Juan Dolio with a bunch of folks
6 from Idaho?
7 A. I remember doing a tour of the property.
8 We have done several since Impact left.
9 Q. But do you remember doing a tour with a
10 bunch of folks from Idaho, who one of whom was Ms.
11 Rasmussen, I believe was her name?
12 A. Yes, I remember that.
13 Q. And then you did a webinar right around
14 the middle of September or so of 2008; do you
15 remember that?
16 A. Yes.
17 Q. And do you remember you gave an estimate
18 at that time of the cost of finishing Juan Dolio,
19 September of 2008; do you remember that?
20 A. Yes.
21 Q. Do you remember what the number was to
22 complete Juan Dolio at that time?
23 A. No.
24 Q. Does \$13.5 million in hard costs sound
25 familiar?

Page 33

1 A. I don't recall.
2 Q. Does that sound about right?
3 A. I don't know.
4 Q. Well, let's take a look.
5 MR. MARTINEZ: This is what?
6 MR. DAVIDSON: Plaintiff's Exhibit 6.
7 (The document referred to was thereupon
8 marked Plaintiff's Exhibit No. 6 for Identification,
9 which was retained by Mr. Davidson.)
10 BY MR. DAVIDSON:
11 Q. I stand corrected. The pages aren't
12 numbered, but if you take a look at Exhibit Number 6,
13 where it says the bungalows Juan Dolio, do you see
14 that, where it says 60 percent completed?
15 What does it say right under there on
16 that unnumbered page, with respect to hard costs
17 left, hard costs remaining, how much left to be
18 spent?
19 A. 13 million.
20 Q. Right. That's for just hard costs,
21 right? That didn't include soft costs?
22 A. That's what it says.
23 Q. That was as of September of '08, right?
24 Isn't that right?
25 A. Is that the date of this webinar?

Page 34

1 Q. Well, you tell me, sir. When did you do
2 the seminar?
3 A. We didn't do a seminar.
4 Q. Sorry. When did you do the webinar?
5 A. I'm looking for the date. It was
6 September or October of '08.
7 I can't see a date here. I'm looking.
8 It was after this tour.
9 Q. All right. So to be fair, maybe it was
10 October of '08?
11 A. It was September or October.
12 Q. All right. So as of September, October
13 of '08, Derrick Elliott estimated \$13 million in hard
14 costs remaining to complete Juan Dolio.
15 As of September and October of '08 there
16 was no construction being done at Juan Dolio, right?
17 MR. MARTINEZ: Objection, compound. You
18 can answer.
19 BY MR. DAVIDSON:
20 Q. Isn't that so, Mr. Elliott?
21 A. Correct.
22 Q. And, in fact, construction did not resume
23 at Juan Dolio until the beginning of March of '08 --
24 of '09, excuse me; isn't that correct?
25 A. Yes.

Page 35

1 Q. So from either September or October, it
2 doesn't matter which date we use, there was no
3 construction, there was no construction in November,
4 December, January, or February '08 or '09, right?
5 A. Right.
6 Q. So in terms of hard costs, whether we
7 take it from September or October of '08, until March
8 6th or so of '09, presumably, as of March 6th or so
9 when you recommenced construction, there would still
10 remain to be approximately \$13 million of hard costs
11 construction to be done on Juan Dolio; isn't that
12 correct?
13 A. No.
14 Q. We're going to mark this as Exhibit 7 to
15 your deposition today, but it was Exhibit 4 to your
16 deposition back on March 28th.
17 (The document referred to was thereupon
18 marked Plaintiff's Exhibit No. 7 for Identification,
19 which was retained by Mr. Davidson.)
20 MR. MARTINEZ: Can I have a copy please?
21 Thank you.
22 BY MR. DAVIDSON:
23 Q. This is your letter of September 4th,
24 2008, where you wrote to residents and bungalow
25 owners, and I will quote the language, and then I

Page 36

1 will give it to you that I am going to call your
2 attention to it.
3 MR. MARTINEZ: What page is that on?
4 BY MR. DAVIDSON:
5 Q. It's Bates stamp 09.
6 MR. MARTINEZ: Thank you.
7 BY MR. DAVIDSON:
8 Q. Under "prepayment discount information
9 updates" you say: "We have arranged for all funds to
10 flow toward the completion of the bungalows at Juan
11 Dolio, together with the payment of hard and soft
12 costs arrears, through our Dominican legal counsel,
13 Enrique De Marchena Kaluche and his firm."
14 So I am handing you what we marked for
15 your deposition today as Plaintiff's Exhibit 7, which
16 was Exhibit 4 to your last deposition. You recognize
17 that letter today, just as you recognized it from
18 last week?
19 Would you please turn your cell phone
20 off, sir?
21 MR. MARTINEZ: I will in a second. Let
22 me take this call. It appears to be from home
23 and it's an emergency.
24 MR. DAVIDSON: Okay. Let's take a
25 break.

Page 37

1 (Thereupon a brief recess was taken,
2 after which the following proceedings were had.)
3 BY MR. DAVIDSON:
4 Q. For simplicity sake we're going to refer
5 to this currently as Exhibit 7.
6 Now, referring to page 9 of Exhibit 7,
7 the line that I read to you, Mr. Elliott, did you
8 mean what you said when you told folks that monies
9 received by the DMK lawyers escrow account were going
10 to be used at Juan Dolio for completion of the
11 project?
12 MR. MARTINEZ: Objection to form. You
13 can answer.
14 THE WITNESS: What I said is we have
15 arranged for all funds to flow toward the
16 completion of the bungalows at Juan Dolio and
17 then in brackets, together with the payment of
18 hard and soft cost arrears, through our
19 Dominican counsel, Enrique De Marchena and his
20 firm.
21 BY MR. DAVIDSON:
22 Q. Yes, I can read, sir. My question is
23 different.
24 My question is, did you mean what you
25 said?

Page 38

1 A. Yes.
2 Q. Did you honor what you said?
3 A. I don't operate the account.
4 Q. What in the world does that mean?
5 MR. MARTINEZ: Objection to form.
6 THE WITNESS: I have no knowledge about
7 this account.
8 BY MR. DAVIDSON:
9 Q. I see. So you make a promise in writing
10 and then you wash your hands of it?
11 MR. MARTINEZ: Objection to form,
12 argumentative.
13 BY MR. DAVIDSON:
14 Q. Is that your position in this litigation?
15 A. It's not.
16 Q. Well, then explain your answer, sir.
17 What is it that you mean?
18 A. It means different people in our company
19 take different responsibilities.
20 My responsibility is not one for this
21 trust account.
22 Q. You just write letters?
23 MR. MARTINEZ: Objection to form.
24 BY MR. DAVIDSON:
25 Q. Make promises?

Page 39

1 MR. MARTINEZ: Same objection.
2 BY MR. DAVIDSON:
3 Q. Other people break them?
4 MR. MARTINEZ: Same objection,
5 argumentative.
6 BY MR. DAVIDSON:
7 Q. In fact, this promise was broken, wasn't
8 it?
9 MR. MARTINEZ: Same objection,
10 argumentative and compound.
11 BY MR. DAVIDSON:
12 Q. Answer the question.
13 A. I have no idea about that account.
14 Q. You do.
15 A. No, I do not.
16 Q. Did you not read the notice of filing,
17 sir?
18 Did you not read what your lawyers filed
19 in court last week with respect to the DMK escrow
20 account?
21 A. Yes, I did.
22 Q. Well, then you know the promise was
23 broken?
24 MR. MARTINEZ: Objection to form.
25 THE WITNESS: No.

Page 40

1 BY MR. DAVIDSON:
2 Q. No?
3 A. No.
4 Q. How could you have not read that
5 document, that escrow agreement, that escrow -- that
6 use of funds, and not understood that the promise
7 that you made was not broken?
8 MR. MARTINEZ: Objection to form.
9 THE WITNESS: It was not broken.
10 (The document referred to was thereupon
11 marked Plaintiff's Exhibit No. 8 for Identification,
12 which was retained by Mr. Davidson.)
13 BY MR. DAVIDSON:
14 Q. Okay. We marked this as Exhibit 8. This
15 is, as you will note at the top, this is what was
16 filed by your lawyers last week, prepared by your
17 company, which is the -- as indicated at the top, the
18 DMK Juan Dolio escrow account.
19 That's the escrow account that your
20 letter of September 4, 2008 urges customers to send
21 their money to so that it can be spent on hard and
22 soft costs to complete the Juan Dolio project.
23 So let's review what happened after
24 September 4, 2008 to all the money that was sent in
25 to that account, shall we.

Page 41

1 MR. MARTINEZ: Objection to form.
2 MR. MR. DAVIDSON: There was no pending
3 question, Mr. Martinez.
4 MR. MARTINEZ: You said shall we. That's
5 a question, isn't it.
6 MR. DAVIDSON: No.
7 MR. MARTINEZ: Okay.
8 BY MR. DAVIDSON:
9 Q. Let's take the entry 10/23/2008. It's
10 the third one down.
11 In fact, I will probably need a pen.
12 Mr. Elliott, so we can move this along more quickly,
13 I will just highlight this as we go along.
14 The first entry I highlighted there for
15 you, on the right-hand side, 10/23/2008. There is an
16 entry 10/23/2008, \$100,000 even and the beneficiary
17 is CCW Dominicana, back up on DMK payment says,
18 e-mail from DMK's office of March 26th, 2009.
19 What is that for, what hard or soft cost
20 is that for?
21 A. I have no idea.
22 Q. The next entry right below that, wire out
23 to WWIN member, Alvin McMichael, payment \$59,024.24.
24 First of all, who is Mr. Alvin McMichael?
25 A. Al McMichael is a client.

Page 42

1 Q. A client of whose?
2 A. Sun Village.
3 Q. Sun Village what?
4 A. Hotel.
5 Q. Which hotel?
6 A. I believe Cofresi.
7 Q. So he's an owner there?
8 A. I believe so, yes.
9 Q. What does it mean he's a WWIN member?
10 A. I don't know.
11 Q. Why would there be a wire going out to
12 WWIN member Alvin McMichael for \$59,000 from the Juan
13 Dolio escrow account, if he's a Sun Village Hotel
14 Cofresi owner?
15 A. I have no idea.
16 Q. What does that have to do with the
17 payment of hard and soft costs at Juan Dolio?
18 A. I don't know.
19 Q. The next entry for \$40,000, beneficiary
20 Opiskely, O-P-I-S-K-E-L-Y, intercompany charges wire
21 transfer, what is that for?
22 What hard and soft cost does that
23 represent on this project?
24 A. I don't know.
25 Q. The next round figure transfer is to DMK

Page 43

1 -- related to DMK paid William Trotter.
2 Who is William Trotter and why is he
3 getting \$10,000 even?
4 A. I know who William Trotter is. I don't
5 know what the payment was about.
6 Q. Who is William Trotter?
7 A. Accountant, and sometimes advisor to the
8 company.
9 Q. An accountant. What kind of accounting
10 work earned him \$10,000 even on this particular
11 project at Juan Dolio?
12 A. I don't know.
13 Q. Did he do work on the Juan Dolio project
14 to earn \$10,000, even?
15 A. I don't know.
16 Q. The next entry 10/30/08, NWN USA, LLC, an
17 even \$15,000.
18 What did NWN USA, LLC do to earn \$15,000?
19 A. I don't know. I have no details on this
20 account.
21 Q. Well, NWN USA, LLC, that's Net Worth
22 Navigators; isn't it?
23 A. No.
24 Q. Who is that?
25 A. I believe it's Net Wealth Navigators.

Page 44

1 Q. Net Wealth Navigators. They are the ones
2 located in Las Vegas?
3 A. Net Worth is your client.
4 Q. Net Wealth Navigators is in Las Vegas and
5 they have absolutely nothing to do with hard or soft
6 costs at Juan Dolio located in the Dominican
7 Republic, do they?
8 A. I don't know.
9 Q. Well, if you don't know, sir, who would
10 know?
11 A. Fred Elliott would know.
12 Q. I see. Just out of curiosity, as a
13 developer, do you know what a hard and soft cost is?
14 A. I do.
15 Q. What is it? What's a hard cost?
16 A. Hard costs would be what you see out this
17 window here, construction, bricks, mortar, tiles.
18 Q. And what's a soft cost?
19 A. Soft cost would be management fees,
20 commissions, legal fees, accounting fees.
21 Q. Related to what?
22 A. Related to the project.
23 Q. What did NWN USA do in October that
24 earned them \$15,000 related to the Juan Dolio
25 project?

Page 45

1 A. I don't know.
2 Q. Let's jump down to the next one,
3 11/5/2008, CCW Dominicana, check number 1001,
4 \$100,000 even.
5 What hard or soft costs of Juan Dolio did
6 that go to pay for?
7 A. I don't know. I have no details about
8 this account for you.
9 Q. Can you take a few moments and look
10 through these three pages and identify for me a
11 single hard or soft cost that was paid for out of
12 this account from October 7 of '08, through March 23,
13 of '09. Take a few moments.
14 I don't want you to answer the question
15 right away. I see you are about to answer that
16 question right away. I don't want you to do that. I
17 want you to look through this document.
18 I know what your mantra is, I've heard
19 it, I don't know, but I want you to look through this
20 document anyway. If that's your answer, that's fine
21 but I want you to look through this document anyway.
22 You can always provide that answer.
23 Look through this document and tell me if
24 you can identify a single hard or soft cost that is
25 being paid in this document.

Page 46

1 MR. MARTINEZ: Move to strike the comment
2 about the mantra.
3 BY MR. DAVIDSON:
4 Q. It's Exhibit 8. Look through it. Take a
5 few moments and tell me if you can identify a single
6 hard or soft cost directed to Juan Dolio that is
7 being paid in Exhibit 8.
8 Are you prepared to respond to my pending
9 question, having reviewed Exhibit Number 8 or would
10 you like me to repeat the question?
11 A. Please repeat the question.
12 Q. Sure. I will have the court reporter
13 read it back.
14 (The question referred to was read by the
15 reporter as above recorded.)
16 BY MR. DAVIDSON:
17 Q. Can you identify for me, Mr. Elliott,
18 having reviewed Exhibit 8 now for a few moments, a
19 single hard or soft cost that is being paid as
20 reflected in Exhibit 8 directed to Juan Dolio?
21 A. Again, I don't have details on the
22 account and I am sure all of these payments were
23 directed towards hard or soft costs for the project.
24 Q. You are sure that all of these payments
25 are hard and soft cost payments?

Page 47

1 A. I am sure they are.
2 Q. Based on what?
3 A. Based on --
4 Q. A guess?
5 A. Based on the letter I wrote.
6 Q. Okay. Now, let me see if I understand
7 this.
8 Based on a letter you wrote, where you
9 say our company is going to use your monies to pay
10 hard and soft costs, you believe that because you
11 said that in the letter, that's what happened?
12 MR. MARTINEZ: Objection to form. You
13 can answer.
14 THE WITNESS: There is a detailed
15 breakdown of the payments right here.
16 BY MR. DAVIDSON:
17 Q. Yes. And you cannot sitting here today
18 tell me, can you, what a single one of these entries
19 represents, can you?
20 MR. MARTINEZ: Objection to form.
21 THE WITNESS: It's not my position in the
22 company to do that, nor do I have the
23 authority.
24 BY MR. DAVIDSON:
25 Q. You don't have a clue --

Page 48

1 MR. MARTINEZ: Same objection.
2 BY MR. DAVIDSON:
3 Q. -- do you?
4 MR. MARTINEZ: Objection to form.
5 THE WITNESS: No.
6 BY MR. DAVIDSON:
7 Q. You already told me, all you did was
8 write the letters.
9 MR. MARTINEZ: Objection to form.
10 BY MR. DAVIDSON:
11 Q. Right?
12 A. I wrote the letter.
13 Q. After you wrote the letter, you didn't
14 give a hoot what happened?
15 A. No.
16 MR. MARTINEZ: Objection to form.
17 THE WITNESS: I proceeded to do my job.
18 BY MR. DAVIDSON:
19 Q. Right. Which was make the promises,
20 worry about the consequences later.
21 MR. MARTINEZ: Objection to form.
22 BY MR. DAVIDSON:
23 Q. Right?
24 MR. MARTINEZ: Argumentative.
25 THE WITNESS: No.

Page 49

1 BY MR. DAVIDSON:
2 Q. That's exactly what you did, bring the
3 money, make the promises, worry about the
4 consequences later, because you didn't think you were
5 going to get caught, did you?
6 MR. MARTINEZ: Objection to form.
7 BY MR. DAVIDSON:
8 Q. But you did get caught.
9 MR. MARTINEZ: Objection to form.
10 BY MR. DAVIDSON:
11 Q. You got sued.
12 MR. MARTINEZ: Same objection.
13 BY MR. DAVIDSON:
14 Q. And once you got sued, then you fought
15 back.
16 MR. MARTINEZ: Objection to form.
17 BY MR. DAVIDSON:
18 Q. Right?
19 MR. MARTINEZ: Same objection.
20 THE WITNESS: Wrong.
21 BY MR. DAVIDSON:
22 Q. What's wrong? What was wrong about what
23 I just said?
24 A. Your statements are wrong.
25 Q. How am I wrong? Tell me. Explain it to

Page 50

1 me.
2 MR. MARTINEZ: Same objection.
3 BY MR. DAVIDSON:
4 Q. Tell me that you have some knowledge
5 about this exhibit.
6 Tell me that you know for a fact what's
7 really going on in Exhibit 8, that you really know
8 what is and is not a hard and soft cost in Exhibit 8;
9 can you do that?
10 MR. MARTINEZ: Objection to form.
11 THE WITNESS: No, I cannot.
12 BY MR. DAVIDSON:
13 Q. Because you don't care --
14 MR. MARTINEZ: Objection to form.
15 BY MR. DAVIDSON:
16 Q. -- do you?
17 A. I do care and --
18 Q. Not enough to find out, do you?
19 MR. MARTINEZ: Let him finish his
20 answer. He was about to finish his answer and
21 you interrupted him.
22 BY MR. DAVIDSON:
23 Q. Go ahead.
24 A. I care enough to leave it in control of
25 the two people who are in charge of that account.

Page 51

1 Q. And who is that?
2 A. Fred Elliott and Enrique De Marchena.
3 Q. By the way, referring to Exhibit Number
4 8, all of these payments that were being made to
5 various people in October of '08, November of '08,
6 December of '08, January of '08, February of '08, all
7 these big payments, what were they doing on a project
8 that wasn't being worked on?
9 MR. MARTINEZ: Objection to form.
10 THE WITNESS: The project was being
11 worked on.
12 BY MR. DAVIDSON:
13 Q. Really?
14 A. Absolutely. Did you not see the business
15 plan? That had been months in preparation. We have
16 redone the entire project, and taken it from 241 keys
17 to 343 keys.
18 The project is a third larger than what
19 it was previously to make it functional.
20 Q. Well, do tell, what was NWN doing in
21 November of 2008 on a project that wasn't being
22 constructed?
23 MR. MARTINEZ: Objection, asked and
24 answered and objection to form. You can
25 answer.

Page 52

1 THE WITNESS: NWN would be fulfilling
2 their client services or sales and marketing
3 obligations.
4 BY MR. DAVIDSON:
5 Q. Selling a project that wasn't being
6 constructed?
7 MR. MARTINEZ: Same objection.
8 BY MR. DAVIDSON:
9 Q. And hadn't been constructed for months?
10 MR. MARTINEZ: Same objection.
11 BY MR. DAVIDSON:
12 Q. Is that correct? Mr. Elliott, you have
13 to answer.
14 A. I answered.
15 Q. No, you didn't. Were they selling a
16 project that hadn't been constructed for months?
17 A. We haven't made a sale for months. Are
18 you aware of the real estate market?
19 Q. Mr. Elliott, you have to listen to my
20 question and answer my question.
21 Back in November 2008, we have already
22 established that thousands and thousands of dollars
23 were being paid to NWN.
24 What were they being paid for?
25 MR. MARTINEZ: Objection to form

Page 53

1 BY MR. DAVIDSON:
2 Q. For the Juan Dolio project?
3 A. I don't know.
4 Q. Let's mark this as Plaintiff's Exhibit
5 Number 9, which was previously Exhibit 11 to your
6 deposition last month.
7 (The document referred to was thereupon
8 marked Deposition Exhibit No. 9 for Identification,
9 which was retained by Mr. Davidson.)
10 BY MR. DAVIDSON:
11 Q. I want --
12 A. Pardon me?
13 Q. I want to call your attention to
14 paragraph 3.
15 Now, as of November 18, 2008 there was no
16 construction going on on Juan Dolio, right? Isn't
17 that right, sir?
18 A. Between what dates? Sorry, I was reading
19 the paragraph. I can't do -- I can't listen and read
20 at the same time.
21 Q. Listen to my question. As of November 18
22 there was no construction going on on the project,
23 right?
24 A. No hard construction.
25 Q. Right, no building, the project had been

Page 54

1 stalled for months?
2 MR. MARTINEZ: Objection to form.
3 BY MR. DAVIDSON:
4 Q. Right?
5 A. Yes.
6 Q. There was no construction that occurred
7 for six months thereafter, right?
8 A. Construction officially started March the
9 4th of '09. March the 4th or March the 5th of '09.
10 Q. And yet in paragraph 3 of this Exhibit
11 Number 9, here is what you are telling folks about
12 their project. Quote: "We have made significant
13 advances during the past months and are preparing all
14 items for final completion during the past two
15 weeks. We have had final detailed meetings with our
16 architects and contractors to ensure a smooth
17 completion."
18 What is it that you were going to be
19 completing?
20 A. The project.
21 Q. Thanks. Now, that was back in November
22 '08. How many sales did you make at Juan Dolio in
23 November of '08?
24 A. Well, that still had to be approved by
25 our board of advisors.

Page 55

1 Q. What, a sale?
2 A. No, the final plan.
3 Q. What are you talking about?
4 A. I am talking about my letter.
5 Q. You are still talking about Exhibit
6 Number 9?
7 Are you feeling uncomfortable about your
8 representations made to your investors in Exhibit
9 Number 9, is that why you're talking about Exhibit
10 Number 9?
11 MR. MARTINEZ: Objection. Counsel,
12 please ask questions. Don't make arguments with
13 the witness, please.
14 MR. DAVIDSON: Excuse me.
15 MR. MARTINEZ: Please do not -- I would
16 appreciate if you would not be argumentative
17 with the witness. Ask questions so he can
18 answer it. That's what I would appreciate.
19 MR. DAVIDSON: He interrupted me.
20 BY MR. DAVIDSON:
21 Q. Did you have a statement that you wanted
22 to make about Exhibit Number 9?
23 A. Not at all. I was answering your
24 question. You can put Exhibit Number 9 away. I
25 don't need Exhibit Number 9.

Page 56

1 Q. You started tell me about your board of
2 advisors.
3 What does your board of advisors have to
4 do with Exhibit Number 9? Your board of advisors had
5 to approve something in Exhibit Number 9?
6 A. Do you want to pull Exhibit Number 9 back
7 out?
8 Q. Sure. Tell me all about Exhibit Number 9
9 and your board of advisors. What is it that they had
10 to do?
11 A. We have made significant advances and are
12 preparing all items for completion. During the past
13 two weeks we have had final detailed meetings with
14 our architects and contractors, which then had to be
15 reviewed and further changes were made.
16 Q. Now, that's back in November 2008?
17 A. Yes.
18 Q. That was what, how many months ago?
19 A. Well, from March it would have been three
20 months before. December basically closes down,
21 right?
22 Q. Well, I usually like to go back to the
23 calender and this is now.
24 A. Well, you do the math, Mr. Davidson.
25 Q. So tell me what does this have to do with

Page 57

1 your board of advisors, this Exhibit Number 9?
2 MR. MARTINEZ: Objection, asked and
3 answered.
4 THE WITNESS: To ensure the project had a
5 smooth completion and that construction was
6 finished properly, the board of advisors was
7 introduced to our company in 2008 to ensure
8 there were no issues moving forward.
9 BY MR. DAVIDSON:
10 Q. Is that the board of advisors that was
11 submitted to Judge Gold this past week?
12 A. Yeah, it is.
13 MR. MARTINEZ: Objection to form.
14 BY MR. DAVIDSON:
15 Q. And they have managed to get Juan Dolio
16 off the ground since they have been appointed?
17 A. Absolutely.
18 Q. It's moving full speed ahead?
19 A. Yes, it is.
20 Q. Okay.
21 A. Despite the negative press campaign that
22 has been orchestrated.
23 Q. So the board of advisors came on board
24 what, about a year ago or so; is that right?
25 A. No.

Page 58

1 Q. When did they come on board?
2 A. It was late summer '08.
3 Q. So they have been on board a little bit
4 less than a year.
5 Now, going back to my original question
6 here, in November of '08 you noted in your letter in
7 Exhibit Number 9 that the Remax sales team has begun
8 their sales program and they are offering full condo
9 ownership?
10 A. Yeah.
11 Q. It's so successful that, quote, Remax has
12 requested additional inventory?
13 A. Uh-huh.
14 Q. Now, starting in November how many sales
15 did Remax make?
16 A. I have a sales report in the business
17 plan for you. We have 44 sales pending right now.
18 Q. No. Going back to November, sir. I want
19 -- I'm going to ask you some very specific questions
20 here and I want very specific answers.
21 We're going to start in November and run
22 through the present. As of November how many sales
23 were done at Juan Dolio by Remax?
24 A. To clarify, you still had to have the
25 escrow and sales agreements completed.

Page 59

1 Remax, unlike Impact, was doing all of
2 the marketing in connection with the commission for
3 eight and a half percent.
4 Q. Mr. Elliott, my time is very limited. I
5 am going to ask you a very specific question, I need
6 a very specific answer.
7 How many sales did Remax make in
8 November? Your answer is?
9 A. They did not sell in November.
10 Q. Okay. So there were zero sales in
11 November of 2008?
12 A. Yes.
13 Q. All right. Let's move to December. How
14 many sales were made at Juan Dolio by Remax in
15 December of 2008?
16 A. They were not selling in December.
17 Q. So Remax made zero sales in December.
18 How many sales did Remax make in January of 2009?
19 A. They began showing purchasers the
20 property in January.
21 Q. And how many sales were made in January
22 of 2009?
23 A. When you do a sale properly it takes a
24 little more time.
25 Q. Mr. Elliott, I told you my time is

Page 60

1 limited.
2 How many sales did Remax make in January
3 2009? I am sorry you are getting upset, but you have
4 to answer the question.
5 A. I am not upset at all.
6 Q. You seem very agitated. How many sales
7 were made in January of 2009 by Remax?
8 MR. MARTINEZ: Objection, move to strike
9 the comment. Answer the question, please.
10 THE WITNESS: Zero.
11 BY MR. DAVIDSON:
12 Q. In February of 2009 how many sales did
13 Remax make at Juan Dolio?
14 A. 44 pending sales.
15 Q. No, how many sales were closed?
16 A. Zero.
17 Q. Okay. So we got zero sales in February
18 of '09. In March of 2009 how many Remax sales were
19 made at Juan Dolio?
20 A. There is 44 pending sales as of February
21 to be processed by Remax.
22 Q. How many sales were closed in March of
23 2009 by Remax?
24 A. They were put on hold because of the
25 erroneous and slanderous press campaign that was

Page 61

1 orchestrated against us.
2 Q. I think what you are trying to tell me is
3 there have been no sales in March either; is that
4 what you are trying to tell me?
5 A. There are 44 pending sales at the
6 property.
7 Q. Do you understand a sale means that
8 somebody buys something and actually pays something
9 and you receive the money for it; you understand that
10 to be a sale in real estate lingo, right,
11 Mr. Elliott?
12 A. In real estate lingo?
13 Q. Yes. You understand that?
14 A. I understand what a sale is.
15 Q. Good. So as of March 2009, given what
16 real estate lingo is, at least how we define it as
17 lawyers and real estate developers, how many sales
18 were there at Juan Dolio?
19 A. I know you're agitated, but just calm
20 down.
21 Q. I'm fine. Go ahead and answer my
22 question.
23 A. Zero.
24 Q. And in April of 2009, using that same
25 lingo, how many sales were there at Juan Dolio?

Page 62

1 A. Zero.
2 Q. And this month of May, how many sales
3 were there so far?
4 A. So far?
5 Q. Yes.
6 A. Zero.
7 Q. Okay. Now, what about resales? In your
8 letter of November 18th you make it sound like
9 resales are going great, quote, Remax has requested
10 additional inventory, unquote.
11 Were resales going great --
12 MR. MARTINEZ: Objection to form. You
13 can answer.
14 BY MR. DAVIDSON:
15 Q. -- as of November 2008?
16 A. This company will sell the entire project
17 out in 2009.
18 Q. Answer my question. Were resales going
19 great as of November 2008 for Remax?
20 A. Remax was not selling in November.
21 Q. So this was all a lie also in November of
22 2008?
23 MR. MARTINEZ: Objection to form.
24 THE WITNESS: We were preparing sales
25 lists.

Page 63

1 BY MR. DAVIDSON:
2 Q. Remax wasn't selling anything in November
3 2008, based on your testimony?
4 A. They were showing the property.
5 Q. Was there anything truthful in Exhibit
6 Number 9 that you wrote?
7 A. The entire letter is truthful.
8 MR. MARTINEZ: Objection to form.
9 THE WITNESS: I know what you're trying
10 to do.
11 MR. MARTINEZ: There is no question
12 pending.
13 MR. DAVIDSON: Let's take a break for a
14 couple of minutes.
15 (Thereupon a brief recess was taken,
16 after which the following proceedings were had.)
17 BY MR. DAVIDSON:
18 Q. Mr. Elliott, what role did you have to
19 play in the creation of the new business plan?
20 A. For the past several months I have been
21 working with Remax and the contractors, providing
22 materials.
23 Q. When did that start?
24 A. That started September, October.
25 Q. Of 2008?

Page 64

1 A. 2008, yeah.
2 Q. So the new business plan that was filed
3 last week, in May of 2009, was actually a process
4 that started back in September or October of 2008; is
5 that right?
6 A. Yeah. We went through a seven step
7 restructure plan and it led us to evaluate current
8 market conditions and what would be needed to
9 complete this property.
10 Q. This property being Juan Dolio?
11 A. Being Juan Dolio, yeah.
12 Q. So the business plan that is reflected --
13 and let's be very precise here. The business plan
14 that is reflected as an exhibit to your deposition, I
15 believe, already -- can you find that for me? As
16 Exhibit 5, that actually had been in the works for
17 many, many months?
18 A. Yes, it has been.
19 Q. When was it completed?
20 A. It was in a go forward state from March
21 the 4th, when construction started. However, this
22 has still not been signed off by the advisory
23 committee, the final items.
24 Q. Now, you are pointing to Exhibit 5. So
25 you are saying that that document was in the form

Page 65

1 that it's in now as of approximately March 4, 2009;
2 is that correct?
3 A. In a position where we could resume
4 construction and sales.
5 Q. You are answering a different question.
6 Focus on my question for a moment.
7 My question is as to the document itself
8 that you are pointing to, that you are holding in
9 your hand, which is Exhibit 5, my question is very
10 straightforward.
11 Was Exhibit 5 the document in existence
12 as of March 4, 2009?
13 A. The whole document?
14 Q. Yes.
15 MR. MARTINEZ: Answer the question.
16 THE WITNESS: Okay. Repeat the
17 question. I just want to make sure I answer you
18 correctly here, please.
19 BY MR. DAVIDSON:
20 Q. Exhibit Number 5 is a business plan
21 draft, which is dated April 29, 2009?
22 A. Yes.
23 Q. It says so on its face?
24 A. Yes.
25 Q. I just want to verify that this business

Page 66

1 plan draft was in existence as of April 29, 2009?
2 A. Yes.
3 Q. Okay. And all of the statistics and
4 information contained in this document, which was
5 filed with the court as of April 29, 2009, was in
6 existence as of that date, correct?
7 A. Yes.
8 Q. Okay. So it's fair to say that all of
9 the assumptions that are contained in this document
10 preceded and were existence long before all the court
11 hearings in this case; is that correct?
12 MR. MARTINEZ: Objection to the form.
13 THE WITNESS: No, that is not correct.
14 BY MR. DAVIDSON:
15 Q. That's what I want to get to. When did,
16 for example, you folks come to decide that Juan Dolio
17 needed to be reconfigured?
18 A. The fall of 2008. The autumn of 2008.
19 Q. And what was the reconfiguration
20 decision, how many units? Strike that.
21 What exactly was decided with respect to
22 reconfiguration in the fall of 2008?
23 A. Well, the main -- the main item after
24 doing a feasibility study with the economic
25 marketplace and our desire to complete the project,

Page 67

1 showed us that the fractional market that was created
2 by Impact would not be the best way to move forward
3 and it would be best for us to focus on long-term
4 condominium purchasers, so we decided to take the
5 east tower for the fractional condo hotel and
6 reconfigure -- the reconfiguration would be done with
7 the central and west towers, to be sold as full
8 condos to the marketplace that is available today.
9 Q. And did you commission a study to be done
10 as to the cost of doing so?
11 A. Yes, we did.
12 Q. Who did that study?
13 A. Our contractor, Jose Pereya, Perco.
14 Q. Perco?
15 A. Yes, his resume is in there.
16 Q. And when did they deliver the cost
17 estimate for that?
18 A. For the project?
19 Q. For the newly revised project you had
20 decided in the fall of 2008.
21 A. That would have been February '09. Then
22 we proceeded with phase one of construction following
23 that on March 4th. March 4th or March 5th, and it's
24 a five month phase one construction program.
25 Q. And phase one involves construction of

Page 68

1 what?
2 A. It involves the construction of the
3 lobby, the pool area, the common areas, the redesign,
4 the reconfiguration, the front facing, redoing the
5 balconies, the parking, and then proceeding from
6 August with the completion of the east tower and then
7 the central and west.
8 Q. So you're already moving forward then on
9 the -- on what is contained in Exhibit Number 5; is
10 that correct?
11 MR. MARTINEZ: Objection to form.
12 THE WITNESS: Partially, yes. Moving
13 forward would be a correct word, partially.
14 There are still elements that need to be
15 confirmed in this. However, we're moving
16 towards this. This is the only answer for the
17 project.
18 BY MR. DAVIDSON:
19 Q. And what was the estimate that was
20 provided by Perco in February of 2009 as to the cost
21 of completion for the project?
22 A. We included that. That's the 12.9
23 million.
24 Q. Okay. And did they provide that to you
25 in writing?

Page 69

1 A. Yes, they did.
2 Q. Who provided that to you in writing?
3 A. The president of Perco.
4 Q. Did he do that in a letter?
5 A. He has a substantial binder that has been
6 created.
7 Q. Did he deliver that to you?
8 A. Yes, he did.
9 Q. Personally?
10 A. Personally? To our offices.
11 Q. When did he deliver that; do you
12 remember?
13 A. February.
14 Q. Some time in February?
15 A. I can't give you the exact date, I'm
16 sorry.
17 Q. But it was in February of 2009?
18 A. I could find the exact date for you.
19 Q. That's not necessary. Did he give your
20 dad a copy and you a copy, or just one copy?
21 A. He delivered two copies.
22 Q. Did he deliver a copy to your father?
23 A. I believe so.
24 Q. Did you have discussions with your father
25 about this, after it was delivered, this document?

Page 70

1 A. Yes, I did.
2 Q. This binder?
3 A. Yes, I did.
4 Q. So certainly when your father testified
5 in court in front of Judge Gold he would have been
6 apprised of these binders or this binder that had
7 been delivered by Perco?
8 A. I don't know. My father is very busy. I
9 am not sure at what point he would have reviewed
10 that.
11 Q. But certainly the construction had
12 restarted prior to the hearings in front of Judge
13 Gold, right?
14 A. Yes.
15 Q. And Perco is involved in that
16 construction?
17 A. Yes.
18 Q. And these binders outline the project
19 going forward that Perco is involved with, right?
20 A. Yes.
21 Q. And this project that Perco is going
22 forward with is a very different project than was
23 originally contemplated for Juan Dolio, correct?
24 A. It's better.
25 Q. I understand that's your subjective

Page 71

1 belief, but it is also a very different concept than
2 what was originally contemplated for Juan Dolio,
3 correct?
4 A. It includes condo hotel and full
5 condominium ownership.
6 Q. Making it a very different project for
7 the buyer?
8 A. Making it better.
9 Q. Again, subjective from a developer's
10 standpoint, correct, but from a buyers perspective
11 some buyers would find it advantageous, others might
12 find it disadvantageous, correct?
13 A. Well, everyone would find it
14 advantageous.
15 Q. Really? Why do you say that?
16 A. Because we're able to deliver the same
17 product that we had defined for the condo hotel and
18 it makes the remainder of the product sustainable
19 through full condominium ownership rather than an MLM
20 company selling fractions.
21 Q. Well, that's certainly a sales pitch from
22 a developer, but from a purchasers' perspective there
23 might be a different view; could you see that?
24 A. Not at all. There is remaining inventory
25 that is going to be reconfigured into full condos.

Page 72

1 Q. Well, let me give you a different
2 perspective. Could you see a vacationer's
3 perspective that they may not wish to be in a
4 development where there are full-time residents who
5 are not other vacationers?
6 A. Sorry, not full-time residents. People
7 aren't moving in full time. These are owner occupied
8 units.
9 Q. Yes.
10 A. So people will put them into rental
11 programs and, in fact, we will have them as part of a
12 vacation club.
13 So even though it's a full condo,
14 vacationers will still be staying in there.
15 Q. Maybe I misunderstood your business plan,
16 sir.
17 A. Perhaps.
18 Q. I thought I understood that the central
19 and west buildings were going to be sold to full-time
20 residents of the Dominican Republic.
21 Did I misunderstand that?
22 A. You did.
23 Q. I see. Who are those going to be sold
24 to?
25 A. They will be sold to Dominicans who will

Page 73

1 use them as a second property, and the remainder of
2 the time put them into a vacation pool.
3 Q. Is that a requirement?
4 A. It's not mandatory.
5 Q. So therefore many Dominicans might use
6 them as their primary home, correct?
7 A. No, that market will not do that.
8 Q. How do you know?
9 A. Because we know the profile of the
10 buyer. They already have homes in Santo Domingo.
11 Juan Dolio is a beach town. People don't want to
12 live there full time.
13 Q. I see. Well, this has all been very
14 informative.
15 During the break that we just had you
16 were outside with your father and he was having a
17 discussion with you about an answer that you provided
18 during your deposition, and your counsel wasn't
19 present, and he was very heated with you and very
20 upset with you about a particular answer that you
21 provided in response to a question or a series of
22 questions that I was asking you. What was he talking
23 to you about?
24 A. What you just said is an outright lie.
25 Q. I'm sorry?

Page 74

1 MR. MARTINEZ: Just answer his question.
2 Object to the form. Answer the question.
3 BY MR. DAVIDSON:
4 Q. What were you discussing with your father
5 during the break?
6 A. He corrected me that it's not a board of
7 advisors, it's an advisory committee, as per the
8 document here. That was my mistake. I'm sorry.
9 This is an advisory committee, not a
10 board of advisors.
11 Q. What's the difference, as far as your
12 father is concerned?
13 A. Well, they are not a board. They are --
14 I mean, it was a two second conversation, and he was
15 not upset and it was not a heated discussion.
16 A committee -- you know what a committee
17 does. You are working with one, don't you?
18 Q. I get to ask the questions. Why was he
19 upset?
20 A. He was not upset.
21 Q. Why was he bringing this point to your
22 attention? What's the difference? Is it a question
23 of control?
24 A. It was a passing comment. Again, he was
25 not upset.

Page 75

1 We were heading to the washroom and he
2 said, by the way, you know, you should remember it's
3 an advisory committee.
4 Q. A very different context you are painting
5 than the one that I heard, but okay.
6 So it's not a board of advisors, it's an
7 advisory committee, meaning your father still retains
8 full power to make all decisions?
9 A. Yes, he does.
10 Q. And that leaves you where?
11 A. It leaves me in the position of business
12 development.
13 Q. What does that mean? What business do
14 you develop?
15 A. Many different areas, from client
16 services, to coordinating with the sales team, the
17 ongoing construction, working with the vacation club
18 companies, several different areas.
19 You know what business development does.
20 It develops areas of the business to be managed by
21 other people.
22 Q. Promoting the business?
23 A. Pardon me?
24 Q. You promote the business?
25 A. Sometimes.

Page 76

1 Q. You sell concepts; is that what you do?
2 A. No, I don't sell concepts.
3 Q. No?
4 A. You said that, not me.
5 Q. You deny you do that?
6 MR. MARTINEZ: Objection, asked and
7 answered.
8 THE WITNESS: I operate the business
9 development entity department of our company.
10 BY MR. DAVIDSON:
11 Q. You don't sell concepts?
12 MR. MARTINEZ: Objection to form.
13 THE WITNESS: I don't sell anything.
14 BY MR. DAVIDSON:
15 Q. You don't sell anything? You don't sell
16 ideas, the idea of people having a good time?
17 MR. MARTINEZ: Objection to form. You
18 can answer it.
19 THE WITNESS: I would promote that idea.
20 BY MR. DAVIDSON:
21 Q. How about promoting the idea of clients
22 getting good value for their money?
23 A. I would promote that.
24 Q. How about the idea of delivering fair
25 value to clients; is that something you would

Page 77

1 promote?
2 A. Yes.
3 Q. How about the idea of truth in
4 advertising, is that something you would promote?
5 A. Yes.
6 Q. How about the idea of delivering what you
7 promise, is that something you would promote?
8 A. Yes.
9 Q. How about the idea of being true to your
10 word, is that something you would promote?
11 A. Yes.
12 Q. How about the idea of honesty in
13 business, is that something you promote?
14 A. Absolutely.
15 Q. Do you believe that when you promote
16 something verbally, that you should deliver it, that
17 you should deliver on your words?
18 A. You certainly do everything in your power
19 to, yes.
20 Q. Have you consistently done with that
21 clients of the Elliott Group over the last three
22 years?
23 Have you, Derrick Elliott, consistently
24 done that with clients of the Elliott Group over the
25 last three years?

Page 78

1 A. We've done everything I can to certainly
2 achieve that. That has always been our attention.
3 Q. No, do you, Derrick Elliott?
4 A. Yes, Derrick Elliott. That has always
5 been our intention.
6 MR. DAVIDSON: We will reserve the
7 balance of our time for cross. Go ahead, your
8 witness.
9 CROSS EXAMINATION
10 BY MR. MARTINEZ:
11 Q. Who is Jason Burley, B-U-R-L-E-Y?
12 A. Jason Burley is the former executive vice
13 president, business associate and friend of mine.
14 Q. Former executive vice president of what?
15 A. The Elliott Group.
16 Q. The Elliott Group of companies?
17 A. Yes.
18 Q. How long was he executive vice president
19 of the Elliott Group of companies?
20 A. I believe he took that post in August
21 2005, and he left the company in the fall of 2008.
22 MR. MARTINEZ: I have no further
23 questions.
24 REDIRECT EXAMINATION
25 BY MR. DAVIDSON:

Page 79

1 Q. Going back to Mr. Burley, what was his --
2 MR. DIAZ: One moment, Gary.
3 (Thereupon a brief recess was taken,
4 after which the following proceedings were had.)
5 BY MR. DAVIDSON:
6 Q. Okay.
7 A. Do you mind if I take a bathroom break
8 for two minutes? Fred, why don't you stay here.
9 I'll will be one minute, guys.
10 (Thereupon a brief recess was taken,
11 after which the following proceedings were had.)
12 BY MR. DAVIDSON:
13 Q. You indicated Mr. Burley worked for the
14 Elliott Group from 2005 until 2008; is that right?
15 A. No, I said he was the executive vice
16 president for those dates.
17 Q. Who did he work for?
18 A. He worked within the Elliott Group.
19 Q. I think I just asked you that question
20 and you seem to be quibbling with me about
21 something. What is it you are quibbling about?
22 MR. MARTINEZ: Objection to form.
23 THE WITNESS: I am just clarifying,
24 Mr. Burley worked longer with the company than
25 those dates. I was clarifying it for you.

Page 80

1 BY MR. DAVIDSON:
2 Q. Okay. Why don't you explain to me how
3 long Mr. Burley worked for the Elliott Group?
4 A. I believe he started in December of '04.
5 Q. But he worked as executive vice president
6 from 2005 to 2008; is that right?
7 A. Yes, that's right.
8 Q. And in his role as executive vice
9 president did he have some role to play in the Juan
10 Dolio project?
11 A. Yes.
12 Q. What did he do there?
13 A. He was at one point the director of
14 development. He oversaw a lot of the development
15 with the property. That was his main area.
16 Q. When was he terminated?
17 MR. MARTINEZ: Objection to form.
18 THE WITNESS: He was not terminated.
19 BY MR. DAVIDSON:
20 Q. Did he resign?
21 A. Yes.
22 Q. When?
23 A. I don't know. It was the fall of last
24 year.
25 Q. Fall of 2008?

Page 81

1 A. Yeah.
2 Q. Why did he resign?
3 A. Fred and I and he had to take a sacrifice
4 through this crisis to work for nothing and he was
5 unable to do that.
6 He had to go back to Canada to earn some
7 money to provide for his family, whereby we can just
8 stay and live beside the property and work there.
9 Q. So you told him you weren't going to pay
10 him any money?
11 A. As his senior position, we asked if he
12 could stay on with Fred and I under those terms, yes.
13 Q. So the answer to my question is yes?
14 A. There is no money to pay.
15 Q. Answer my question, sir. You told
16 Mr. Burley that he needed to stay to work for free or
17 he needed to leave; is that correct?
18 MR. MARTINEZ: Objection to form.
19 THE WITNESS: It wasn't said like that.
20 I told you -- I explained to you the situation.
21 BY MR. DAVIDSON:
22 Q. Well, exactly how did you say it?
23 A. There is a lot of work to be done and
24 there will be no revenue from the company for Fred or
25 Derrick or you for the foreseeable future.

Page 82

1 We're going to have to roll up the
2 sleeves and do what it takes.
3 Q. Are you aware of whether Mr. Burley has
4 had any communications with Michael Diaz of our
5 office over the last three months?
6 A. No, I'm not.
7 Q. Are you currently involved in any
8 litigation with Mr. Burley, either directly yourself
9 or through any of your companies?
10 A. No.
11 Q. Is Mr. Burley involved in any litigation
12 with any of the Elliott companies?
13 A. Against the Elliott companies?
14 Q. I will repeat my question. Is Mr. Burley
15 involved with any litigation involving any of the
16 Elliott companies?
17 MR. MARTINEZ: Objection to form.
18 MR. DAVIDSON: What's wrong with the
19 form?
20 MR. MARTINEZ: I am not really sure what
21 you mean by companies. He asked you to
22 qualify.
23 BY MR. DAVIDSON:
24 Q. Answer the question.
25 A. I know that he is being sued in Utah.

Page 83

1 Q. By whom?
2 A. A client.
3 Q. Is Mr. Burley involved in any litigation
4 related to his employment separation from the Elliott
5 companies?
6 A. No, we still -- we're still business
7 associates in different things.
8 Q. That's not my question. My question is,
9 is there a dispute involving litigation as between
10 Mr. Burley and any of the Elliott companies?
11 A. No.
12 Q. Forgetting about litigation, are there
13 ongoing discussions between you or any of the Elliott
14 companies or any of the Elliott executives with
15 Mr. Burley about Mr. Burley requesting any
16 compensation for work he did for the Elliott
17 companies?
18 A. There are those discussions, yes.
19 Q. Who is having the discussions?
20 A. Fred is having those.
21 Q. So Mr. Burley is making claims for
22 compensation; is that correct?
23 MR. MARTINEZ: Objection to form.
24 THE WITNESS: Pardon me?
25 BY MR. DAVIDSON:

Page 84

1 Q. Mr. Burley is making claims for
2 compensation; is that correct?
3 MR. MARTINEZ: Objection to form. You
4 can answer.
5 THE WITNESS: No, he's not making claims
6 for compensation. He had advanced some funds to
7 one of the projects and those funds are due to
8 him.
9 BY MR. DAVIDSON:
10 Q. So the Elliotts owe him money?
11 A. One of our companies do, yeah.
12 Q. Is this Elliott company going to pay him?
13 A. Yes.
14 Q. How much is owed?
15 A. I don't know.
16 Q. Who knows?
17 A. Fred would know that.
18 Q. How much investor money was raised for
19 Juan Dolio?
20 MR. MARTINEZ: Objection. This goes
21 beyond the scope of cross.
22 MR. DAVIDSON: Excuse me?
23 MR. MARTINEZ: Your right on redirect is
24 to ask questions relating to my cross. That's
25 what redirect is. That's the very definition to

Page 85

1 of redirect. You don't get to open up a new
2 line of questioning.
3 MR. DAVIDSON: Excuse me?
4 MR. MARTINEZ: You heard me.
5 MR. DAVIDSON: I have two hours.
6 MR. MARTINEZ: No, sir. You waived
7 whatever you were going to ask the first time
8 around, you had the right. Listen, that's
9 fine. If you have a problem with that, bring it
10 up to the judge.
11 You did the direct, we did our cross, you
12 do the redirect. We're not opening a new line
13 of questioning. That's it. Do you have any
14 other questions to ask him that are specifically
15 related to my cross examination?
16 MR. DIAZ: Yes.
17 MR. DAVIDSON: Yes, I do.
18 (Thereupon a brief recess was taken,
19 after which the following proceedings were had.)
20 BY MR. DAVIDSON:
21 Q. Mr. Burley's role as executive vice
22 president you indicated included oversight of Juan
23 Dolio; is that correct?
24 A. Yes.
25 Q. In that capacity did he -- up until 2008

Page 86

1 did he have a role to play with respect to the
2 construction project at Juan Dolio?
3 A. Yes.
4 Q. Did he have a role to play with respect
5 to the uses of funds received by the corporation or
6 corporations that were constructing Juan Dolio?
7 A. Yes.
8 Q. Were you involved in oversight, in
9 addition to Mr. Burley, the construction at Juan
10 Dolio?
11 A. Not really, no.
12 Q. Were you involved in the uses of funds
13 for Juan Dolio?
14 A. No.
15 Q. Did you ever have any discussions with
16 Mr. Burley about construction at Juan Dolio?
17 A. Yes.
18 Q. Did you ever have any discussions about
19 uses of funds at Juan Dolio with Mr. Burley?
20 A. Yes.
21 Q. Did Mr. Burley ever tell you that
22 approximately \$91 million had been raised from
23 investors for use at Juan Dolio?
24 A. No.
25 Q. Prior to today did you ever come to learn

Page 87

1 that over \$91 million had been raised for use at Juan
2 Dolio?
3 A. I would have to look at a statement. I
4 don't know.
5 Q. It's already been marked. Take a look at
6 your own accountants, Gomez Nina & Associates, page 6
7 of 13 of document 2415, look at the top of the page,
8 cash from operating activities.
9 Do you see \$91,428,130 under Sun Village
10 Juan Dolio, Inc.?
11 A. I see that.
12 Q. Prior to sitting here today in this
13 deposition room did you ever come to be aware that
14 somewhere in the neighborhood of \$91 million had been
15 raised from investors to construct Juan Dolio?
16 A. I'm aware of this statement, yes.
17 Q. No, no. I know you are aware of the
18 statement, you are sitting here looking at it.
19 I am asking you prior today, forgetting
20 about the statement. The statement was produced by
21 Gomez Nina & Associates a few days ago.
22 Prior to today were you ever aware that
23 this vast sum of money had been raised to build Juan
24 Dolio?
25 A. I am aware of the amounts that were sold

Page 88

1 to fractional owners, and I am aware of the amount
2 that was sold to the timeshare purchasers.
3 Q. So were you aware of this back in 2008,
4 say in September?
5 A. I don't know.
6 Q. What do you mean you don't know?
7 A. I don't know if I had that number in
8 September --
9 Q. Well, how about --
10 A. -- of 2008.
11 Q. How about the end of 2008, did you know
12 that?
13 A. I believe so.
14 Q. All right. Did it at some point ever
15 occur to you that given that vast sum of money
16 raised, that the hotel should be constructed or
17 should have been constructed?
18 A. There were several changes to the
19 project, several enhancements, and I think you can
20 see where the funds were disbursed, the massive
21 amounts taken by James Catledge and the sales force.
22 It's self-explanatory where the funds were
23 disbursed.
24 Q. Yes, it is, particularly the outflows to
25 related parties. You have reviewed that item,

Page 89

1 haven't you, prior to today?
2 A. Yes, I have.
3 Q. That's loans to related parties net?
4 A. Uh-huh, I see that.
5 Q. How much was that?
6 A. 17,236,493.
7 Q. \$17,236,000, right?
8 A. And 493.
9 Q. Which related parties were those funds
10 flowing to, out of investor funds?
11 A. Out of sales to fractional owners and
12 timeshare purchasers.
13 Q. You misunderstand my question. The \$17
14 million that flowed from investor funds that had been
15 given to construct the Juan Dolio project, where did
16 they flow to?
17 MR. MARTINEZ: Objection to form. You
18 can answer.
19 THE WITNESS: Okay. They flowed to the
20 different related parties as indexed in the
21 statement.
22 BY MR. DAVIDSON:
23 Q. Yes. Were those Catledge entities,
24 Mr. Elliott?
25 A. I believe not.

Page 90

1 Q. So if they weren't Catledge entities,
2 which entities were those, that those funds flowed
3 to?
4 A. The related party loans are indexed in
5 the financial statements and those are related
6 parties to the Elliott Group.
7 Q. Right. And how much is needed to
8 complete the Juan Dolio Hotel as of today, based on
9 the calculations you filed with the court last week?
10 A. You know what that is.
11 Q. Tell me.
12 MR. MARTINEZ: Answer his question.
13 BY MR. DAVIDSON:
14 Q. You answer the question, sir.
15 A. It's 12.9 million.
16 Q. So if the 17 million plus hadn't been
17 sucked out by the related parties to the Elliott
18 Group, way back when, the Juan Dolio Hotel would be
19 done now, wouldn't it?
20 MR. MARTINEZ: Objection to form.
21 THE WITNESS: Not necessarily. Not
22 necessarily. That's not a fair statement to
23 make or a fair comment at all.
24 You see the receivables --
25 MR. MARTINEZ: There is no question

Page 91

1 pending.
2 BY MR. DAVIDSON:
3 Q. You may continue with your answer. Did
4 you have something you wanted to add?
5 A. No, I don't.
6 Q. Have the related party loans been paid
7 back by the Elliott Group to Juan Dolio?
8 A. No, they have not.
9 Q. Did you ever tell the investors in any of
10 your letters, when you were urging them to put money
11 into the escrow account, that their monies were going
12 to be used, in part, as loans to Elliott Group
13 companies?
14 A. I have no knowledge of that escrow
15 account. I already told you that.
16 Q. That's not my question. In any of your
17 letters to the investors, where you urged them to put
18 their hard earned money into the escrow account in
19 Florida or in the Dominican Republic, did you ever
20 tell them that part of those monies, once they got
21 into the escrow account, were going to be sent to
22 other Elliott Group companies for use by other
23 Elliott Group companies for other things?
24 MR. MARTINEZ: Objection to form.
25 THE WITNESS: No.

Page 92

1 BY MR. DAVIDSON:
2 Q. Do you think that had you done that
3 investors would have sent money into the escrow
4 account --
5 MR. MARTINEZ: Objection, calls for
6 speculation.
7 BY MR. DAVIDSON:
8 Q. -- in Florida or the Dominican Republic?
9 MR. MARTINEZ: Objection, calls for
10 speculation.
11 BY MR. DAVIDSON:
12 Q. Answer the question.
13 A. That was not done.
14 Q. What was not done? What was not done?
15 Are you saying that money wasn't taken out of the
16 escrow account and sent to other companies in the
17 Elliott Group?
18 MR. MARTINEZ: Objection to form.
19 BY MR. DAVIDSON:
20 Q. Is that your testimony?
21 A. I do not have information on that
22 account. You can get that from Fred or Enrique.
23 However, as per my letter, it was pretty
24 straightforward on where those funds would be sent.
25 Q. We reviewed the escrow account. You saw

Page 93

1 the wire transfers going out from the escrow account
2 as intercompany transfers to other Elliott Group
3 companies, didn't you?
4 A. I did not see the full accounting.
5 Q. Are you denying under oath that your own
6 accounting that you filed with the court, as
7 reflected in Exhibit 8, indicates intercompany
8 transfers going out of the escrow account to other
9 Elliott Group companies? Look at page 1 of exhibit
10 8.
11 MR. MARTINEZ: Objection to form.
12 THE WITNESS: I am not denying anything
13 under oath. I'll say it again, this account has
14 been used appropriately and the information
15 pertaining to that can be gotten from Fred
16 Elliott.
17 BY MR. DAVIDSON:
18 Q. Open it up, please. Look at Exhibit
19 number 8, middle of the page.
20 A. Uh-huh.
21 Q. You see here intercompany charge, wire
22 transfer, payment. You see that whole list of
23 charges there?
24 The first one is for \$6,075.45. There is
25 another one for \$28,533. There is another one for

Page 94

1 \$9,500, and then there is another one for \$8,333, and
2 there is another one for \$35,000.
3 You see all of those intercompany charges
4 listed on the escrow account for Juan Dolio, sir,
5 Exhibit Number 8; do you see that?
6 A. I do.
7 Q. So you acknowledge then that as to the
8 escrow account there were, in fact, transfers made
9 out of that account, the Juan Dolio escrow account,
10 to other Elliott Group companies?
11 MR. MARTINEZ: Objection to form.
12 BY MR. DAVIDSON:
13 Q. Correct?
14 A. It says right there.
15 MR. DAVIDSON: Thank you.
16 MR. MARTINEZ: Times up, I think. We'll
17 read.
18 MR. DAVIDSON: We intend to use this
19 transcript and file it with the court.
20 Mr. Elliott, you have the right to read it but
21 just be aware we're going to be using the
22 transcript and ordering it on an expedited basis
23 for filing with the court immediately for
24 consideration of the court in its deliberations
25 on our request for preliminary injunction.

Page 95

1 MR. MARTINEZ: Okay.
2 (Thereupon the taking of the deposition
3 was concluded.)
4
5
6 Deponent
7
8 Sworn to and subscribed before me this
9 day of 2009.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 96

1 CERTIFICATE OF OATH
2
3
4 STATE OF FLORIDA:
5 SS:
6 COUNTY DADE:
7
8
9 I, the undersigned authority, certify that
10 DERRICK ELLIOTT personally appeared before me and was
11 duly sworn.
12 WITNESS my hand and official seal this 7th
13 day of May 2009.
14
15
16 Notary Public, State of Florida at
17 Large; my commission expires
18 February 26, 2011. Bonded through
19 Troy Fain Insurance, Inc.
20
21
22
23
24
25

Page 97

1 CERTIFICATE OF REGISTERED PROFESSIONAL REPORTER
2
3
4 I, EDWARD VARKONYI, and Registered
5 Professional Reporter and a Notary Public for the
6 State of Florida at Large, do hereby certify that I
7 reported the deposition of DERRICK ELLIOTT; that the
8 foregoing pages, numbered from 1 to 95, inclusive,
9 constitute a true and correct transcription of my
10 shorthand report of the deposition by said witness on
11 this date.
12 I further certify that I am not an
13 attorney or counsel of any of the parties, nor a
14 relative or employee of any attorney or counsel
15 connected with the action, nor financially interested
16 in the action.
17 WITNESS my hand and official seal in the
18 City of Miami, County of Dade, State of Florida, this
19 7th day of May 2009.
20
21
22 Notary Public, State of Florida at
23 Large; my commission expires
24 February 26, 2011. Bonded through
25 Troy Fain Insurance, Inc.

1 May 7, 2009

2
3
4 Elio F. Martinez, Jr., Esquire
Concepcion Sexton & Martinez
5 355 Alhambra Circle, Suite 1250
Coral Gables, Florida 33134

6 RE: Hofmann v. EMI

7 Dear Mr. Martinez,

8
9 With reference to the deposition of Derrick
Elliott taken on May 7, 2009 in connection with
10 the above-captioned case, please be advised that
the transcript of the deposition has been
completed and is awaiting signature.

11 Please arrange to have the deponent stop by our
12 office at 19 West Flagler Street, Suite 1020,
Miami, Florida, for the purpose of reading and
13 signing the transcript.

14 If this is not taken care of, however, within the
15 next 30 days, we shall conclude that the reading
and signing of the deposition has been waived and
16 shall then process the original of the transcript
for filing with the Clerk of the Court by counsel
without further notice.

17 Sincerely,

18
19 Edward Varkonyi,
20 Registered Merit Reporter
21
22
23
24
25

1 ERRATA SHEET

2 RE :
DEPO OF:
3 TAKEN :
4 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

5 Page #	Line #	Change	Reason
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____

21 State of Florida)
County of)

22
23 Under penalties of perjury, I declare that I have
read my deposition transcript, and it is true and
24 correct subject to any changes in form or substance
entered here.

25 _____
Date Signature